

# **EXHIBIT 50**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Kelly Wilson,

Plaintiff,

v.

The Walt Disney Company, Disney  
Enterprises, Inc., Walt Disney Pictures, and  
Walt Disney Motion Pictures Group, Inc.,

Defendants.

**Case No. 3:14-cv-01441-VC**

**Expert Report of James McDonald**

**February 9, 2015**

## BACKGROUND AND QUALIFICATIONS

I am a Story Analyst and consultant on screenwriting and writer-credit issues for motion pictures. I have a Bachelor of Arts in Communications from Stanford University and an M.F.A. in Directing for Film & TV from the UCLA Film School.

Over the last four decades, I have worked for every major studio and several other studios and production companies. In that time, I have read and analyzed more than 10,000 submissions for feature film development. I spent two years as vice president in charge of development for an independent production company. As a producer, with partners, I put three feature film projects into development at studios and production companies.

Over the last two decades, I have reviewed and analyzed the development process of more than 70 animated feature films and made recommendations as to writing credits.

My current curriculum vitae is attached to this report as Exhibit A.

Within the last four years, I have testified as an expert at one arbitration, a 2013 arbitration concerning the “story by” and “screenplay by” credits for the motion picture *Frozen*.

I have prepared and delivered this report in connection with the case *Wilson v. The Walt Disney Company et al.*, No. 3:14-cv-01441-VC, currently pending in the United States District Court for the Northern District of California. I have been retained by counsel for the Defendants to analyze and testify about the similarities and differences between the Plaintiff’s short animated film *The Snowman* and the Defendant’s teaser trailer for the feature film *Frozen*. I am being compensated for my time spent conducting this analysis at the rate of \$180 per hour. In the event that I testify in this matter, I will be compensated for my time at the rate of \$370 per hour.

## ASSIGNMENT AND APPLICABLE STANDARDS

At counsel’s request, I have analyzed the two works at issue under what I understand to be the standards applicable to the “extrinsic test” of substantial similarity. I have been asked to assume that, for purposes of the works at issue here, the extrinsic test requires a comparison of the works’ setting, plot, characters, theme, mood, pace, dialogue, and sequence of events. In particular, I understand that an expert must “filter” out certain unprotectable elements that fall on the “idea” side of the “idea-expression” dichotomy. Within the framework of the filtration standards I have been asked to assume and apply, I have brought to bear my knowledge and experience with respect to the creation and development of stories into motion pictures.

My analysis in this report assumes that the following principles guide the filtration analysis:

- I understand that filtration is the process of identifying and discarding unprotectable elements before comparing two works to determine their substantial similarity. As explained to me, I understand that Judge Learned Hand described a test of “abstractions” to draw the line between protectable and non-protectable elements. I am informed that Judge Hand described this test as follows: “Upon any work and

especially upon a play a great number of patterns of increasing generality will fit equally well, as more and more of the incident is left out. The last may perhaps be no more than the most general statement of what the play is about and at times consist of only its title, but there is a point in this series of abstractions where they are no longer protected since otherwise the playwright could prevent the use of his ideas to which apart from their expression his property is never extended.”

- I have assumed that, at a stage of analysis referred to as the extrinsic stage, unprotectable elements must be filtered out before the court compares the two works. I understand that these unprotectable elements include ideas, expression merged with ideas, scenes-a-faire (or stock features), features dictated by functional considerations, as well as features that are not original to the copyright plaintiff.
- I understand that scenes-a-faire are defined as stock elements that flow from a basic idea, and that they must be filtered out. These stock elements may be patterns, motifs, situations, or scenes that are bound to occur given certain story parameters. For example, I understand that in a work whose basic idea is a dinosaur zoo, elements such as electrified fences, automated tours, dinosaur nurseries, and uniformed workers have been deemed to be scenes-a-faire.
- I understand that the merger doctrine is similar, but not identical, to the scenes-a-faire doctrine. I understand that the merger doctrine applies when there is a “merger” of idea and expression, such that a given idea is inseparably tied to a particular expression. For example, I understand that the courts have said that idea of a jeweled pin in the form of a bee is capable of only one form of expression, and thus the idea and expression have been said to merge.
- I further understand that, where functional considerations in the subject matter or medium selected constrain the author’s creative choices, the constrained elements must be filtered out. For example, I understand that courts have concluded that, because the process of visualizing the sport of karate in a videogame is constrained by the nature and rules of sport itself, the elements that flow from those constraints must be filtered out.

### **MATERIALS AND INFORMATION CONSIDERED**

In conducting my analysis, I have reviewed and considered the following materials:

- Plaintiff’s *The Snowman* – <https://www.youtube.com/watch?v=PJ6c7RLV8ew>.
- Disney’s *Frozen* teaser trailer – <https://www.youtube.com/watch?v=-WdC4DaYIeQ>.
- Plaintiff’s complaint in *Wilson v. The Walt Disney Company et al.*, No. 3:14-cv-01441-VC, dated 3/28/14.
- The Court’s “Order Granting in Part and Denying in Part the Motion to Dismiss,” dated 7/10/14.

## SUMMARY OF OPINIONS

Based on the materials I have reviewed and the analysis that I describe below, I conclude that, after filtering out the unprotectable elements of *The Snowman*, there is no substantial similarity between *The Snowman* and the *Frozen* teaser trailer at the level of expressive content. This conclusion holds along all of the pertinent dimensions of plot, characters, themes, mood, setting, pace, dialogue, and sequence of events.

I understand that the plaintiff has stated that her contentions regarding the protectable similarities of expression may be found in her complaint. I therefore have reviewed her complaint to consider whether the points she raises change my analysis. They do not. The similarities that the plaintiff identifies either do not exist at all or exist at such a high level of abstraction as to constitute unprotectable “ideas” instead of the protectable “expression” of those ideas.

## ANALYSIS

The works under analysis are two fundamentally different types of work with different purposes: *The Snowman* is a short story that intends to—and does—tell a fully fleshed-out drama. Its characters develop dimension and complexity through the course of the story line.

The *Frozen* teaser trailer is a promotional action sequence that offers the prospective audience for the *Frozen* movie an introductory glimpse of two characters and, in essence, “teases” the audience with some of the comedic tone in the film.

I believe that these fundamental differences in the works are reflected in each of the characteristics relevant to the extrinsic test.

### 1. Plot

The plot differences between the two works are substantial, while the similarities are superficial to the point that the works only share abstract ideas. Even though *The Snowman* is a fully fleshed-out drama and the *Frozen* teaser trailer is simply an action sequence (a “set piece”), one can apply to both works the paradigmatic three-act plot structure and framework formula to best articulate their similarities and differences.<sup>1</sup> This structure consists of an “inciting incident,” which sets up a “conflict” (act one), which is then “complicated” (act two) as it builds to a “climax,” which ends with a “resolution” (act three).

#### *Inciting Incident*

Both works start from with the same idea for an inciting incident—a snowman loses his nose. But the works substantially differ in their expression of how each snowman loses his nose, where it lands, and how each snowman’s initially reacts. In *The Snowman*, a bird knocks the carrot nose off the frightened Snowman while he is standing on a hill; it lands in the snow at his feet, and the Snowman tries to reach his nose but can’t because his arms are too short.

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<sup>1</sup> On the three-act structure, see Syd Field, *Screenplay* (1979).

In the *Frozen* teaser trailer, the happy-go-lucky snowman Olaf stops to smell a flower and sneezes, causing his carrot nose to fly off and land in the middle of a frozen pond.

### *Conflict – External*

Since each snowman naturally wants his nose back after he loses it, formula story logic dictates that external or internal conflict must stand in the way of that goal to create a plot. There are limited plotting options to creating an external conflict with the foregoing inciting incident: either (1) someone must want to stop the snowman from getting his nose back, or (2) someone must want to get the nose for himself. If someone wants the nose for himself, then logically there must be a race to retrieve it before the snowman does. For this reason, the external conflict in both works consists of the similar basic idea of someone other than the snowman pursuing the nose.

There are substantial differences, however, in the expression of who the rivals are, how they are introduced, and what their initial, conflict-establishing actions are. In *The Snowman*, four rabbits attempt to sneak up on the Snowman, and then chase after him as he pushes and kicks his nose down a hill away from them.

In the *Frozen* teaser trailer, in contrast, a reindeer, Sven, sees Olaf's nose land on a pond, then excitedly rushes onto the ice to retrieve it. Seeing this, Olaf rushes onto the pond as well.

### *Conflict – Internal*

*The Snowman* presents two plot moments of internal conflict: first when the Snowman is faced with the decision to use his nose to save the rabbit or not, and second when the rabbit must decide whether to keep the nose or give it back after being rescued.

Olaf and Sven show no signs of having an internal conflict in the *Frozen* teaser trailer.

### *Complication*

The most logical (and common) way to develop plot complications is to introduce obstacles for the characters to overcome. In both works, the snowman's nose comes to rest in the middle of a slippery frozen pond, which creates the same basic obstacle for the protagonists and rivals. The idea of a frozen pond in a wintery setting is a stock element. So, too, is the fact that the ice is slippery and poses obstacles for the characters to cross. The idea of animated characters slipping and sliding across ice is a standard device in animated works, including most famously Bambi and Thumper sliding across the ice in Bambi.

The expression of how the obstacle is introduced and how the characters deal with it in the two works, however, is substantially different. In *The Snowman*, the frozen pond is introduced when the Snowman trips on a boulder and his nose slides down the hill onto the ice. The rabbits rush past the fallen Snowman and onto the ice, but fail to grab the carrot nose as they slide past it to the opposite side of the pond. The Snowman reaches the edge of the pond and watches the rabbits on the opposite side hold a meeting, make a plan, and execute it by cutting down a tree and building a log walkway onto the pond. The Snowman, who realizes he will slip

on the pond ice, looks around, sees two sticks, carries them up the hill, and uses them as skis to carry him down the hill across the ice to his carrot nose.

In the *Frozen* teaser trailer, the pond is introduced when Olaf's nose lands on it. There is no action prior to the nose landing on the pond, and no forethought or planning on the part of either Olaf or Sven as they rush onto the pond and slip, slide, and bumble their way to the carrot nose.

### *Climax*

The climax of a plot centered on confrontation occurs when the rivals finally confront each other face-to-face. This basic idea of confrontation thus imposes a constraint: the two competing characters must arrive at a point of showdown, usually in a situation where both wind up at the same place at the same time. In the case of these two works, the nature of the conflict constrains the climax such that the opposing characters must reach the nose at the same or nearly the same moment.

The expression of the climactic confrontation in *The Snowman* is substantially different from the expression of climactic confrontation in the *Frozen* teaser trailer. There are three climactic moments in *The Snowman*: (1) when the Snowman skis up to his nose and retrieves it just as the fat rabbit lunges off the log walkway; (2) when the Snowman decides to use his nose to save the drowning rabbit; and (3) when the rabbit has to decide whether to keep the carrot nose or give it back.

In the *Frozen* teaser trailer, the climactic action has Sven—not Olaf—grabbing the carrot nose; Olaf yanking it away from him, causing it to flip out of his hand into the snow on the hillside; Olaf grabbing Sven's tail for a wild ride to the other side of the pond; and then Olaf collecting his body parts dejectedly as he believes Sven has taken the carrot for good.

### *Resolution*

Given the inciting incident in both works—a snowman losing his nose—there are logically only two possible resolutions: he gets his nose back or he doesn't. Both works resolve the same way, with the snowman getting his nose back, but the expression of that resolution is substantially different between the two works. In *The Snowman*, the resolution starts with the rabbit ending his deliberation and deciding to give the Snowman back his carrot nose in gratitude for saving his life, and ends with the rabbits hopping off into the forest and leaving the Snowman alone—as he was in the beginning of the story, but happy to have his nose back. The resolution is a highly dramatic, lengthy scene, which brings this Snowman's journey full circle from sad and frightened in the beginning to happy and confident in the end.

The resolution in the *Frozen* teaser trailer starts with Olaf briefly lamenting the loss of his nose as he puts his body back together on the edge of the pond; followed by Sven leaping into the frame and putting the carrot nose back on Olaf's face; followed by Sven bouncing up and down and wagging his tail like a dog, with Olaf happily petting him; and then ends with Olaf realizing he's going to sneeze again, holding his nose, and sneezing his head off. These scenes bring Olaf's journey full circle as well, but in a comic manner rather than a dramatic one: Olaf

goes from comically sneezing off his nose because he's allergic to flowers in the beginning to comically sneezing off his head because he's allergic to reindeer hair in the end.

### *Plaintiff's Claims*

The Plaintiff asserts that “there is no difference in the plot between the two works, except that *The Snowman* is longer in running time and therefore has additional plot elements. Both works are about: (1) a snowman competing with animals for a carrot nose on slippery ice; and (2) the formerly adversarial animals acting out of friendship to return the carrot nose to the snowman.” Complaint ¶ 35(a).

The Plaintiff is right that *The Snowman* has a longer running time with more plot elements than the teaser trailer has. But those “additional plot elements”—such as the entire narrative arc of the Snowman rescuing the rabbit—are part of what makes the plots substantially different from each other.

Even considering just those plot elements the works have in common, the Plaintiff's summary of what “both works are about” is a superficial abstraction of the action in both works. Plaintiff's abstraction fails to address the specific expression of the plot idea, such as how the snowmen lose their noses, how the noses end up on the frozen pond, and how the action on the pond plays out. Other than the fact that the nose lands in the middle of a (logically) slippery frozen pond, the Plaintiff offers no specific details comparing how the plot action in the two works is structured and expressed. *The Snowman* is a dramatic short story with plot and character complications that develop into a life and death crisis posing challenging moral decisions. The *Frozen* teaser trailer is a Looney Tunes-like action sequence; it has the formulaic beginning, middle, and end structure to its action, but has no story or character development and no climactic crisis where dramatic decisions have to be contemplated or made. In short, the Plaintiff fails to provide a detailed analysis of the two works to substantiate her claims of similarity. And, as I have discussed above, in my opinion the plots are fundamentally different once the abstract ideas of the plots are filtered out.

## **2. Characters**

There are no similarities between the expression of the characters in *The Snowman* and the *Frozen* teaser trailer. Indeed, the only similarity is that both works have snowmen. But the Snowman in *The Snowman* and Olaf in the teaser trailer are visually dissimilar, have no character traits in common, and don't act or react to events in a similar manner. The Snowman first appears sad, awkward, insecure, clumsy, and fearful, and then develops some character dimension, pathos, and complexity as his dramatic story unfolds. He begins by being withdrawn and frightened of the bird that knocks off his nose, as well as clumsy and pathetic as he nudges his nose away from the rabbits that appear. He then exhibits some grit and determination as he lets go of his fears and figures out how to get to his nose before the rabbits do. Finally, he shows some pathos and humanity when faced with the moral dilemma of letting the rabbit drown or using his nose to save him.

In the *Frozen* teaser trailer, Olaf shows little character complexity or development at any point during the action sequence. His personality traits are almost the exact opposite of the



Plaintiff's Snowman. Olaf is first seen happy, relaxed, and outgoing, and then comically zany in his crazed, panicky efforts to retrieve his nose. Though his body falls apart several times, he demonstrates hilarious skill and imagination in using his body parts to get across the ice.

As for the antagonists, there are no similarities between Sven and the rabbits in their character traits, personalities, actions, or reactions. Nor are there similarities in the characters' development. The rabbit characters have a development arc: they are first seen being stealthy; then threatening in their pursuit of the Snowman and his nose; then methodical in their planning and execution of their walkway onto the pond; then frightened when one of them falls through the ice; and finally thoughtful and moral in deciding to return the nose. Sven has no character-development arc: he comes across like an exhilarated dog pursuing a tossed bone from beginning to end. There is no suggestion or implication that Sven stops to think about returning Olaf's nose; it simply appears he was playing fetch all along.

### *Plaintiff's Claims*

The Plaintiff states in her complaint that the characters in the two works are substantially similar because “(1) the snowman in *The Snowman* and Olaf the snowman in the *FROZEN* teaser trailer are depicted as equally complex characters; and (2) the corollary, analogous character to the rabbits in *The Snowman* is the moose in the *FROZEN* teaser trailer.” The Plaintiff then goes on to argue that the “personalities and visual depictions” of the snowmen are the same, and that both are “awkward, insecure and clumsy,” and that “the corollary competing animals in both works are characterized in the same way.” Complaint ¶ 35(b).

In my opinion, the plaintiff's assertions are contrary to the content of the works. The two snowmen are completely dissimilar characters, and the reindeer Sven is obviously nothing like the pack of rabbits. The only similarities are completely generic ones: both works have a snowman protagonist and animal antagonists.

### **3. Themes**

The Plaintiff's *The Snowman* and the Defendant's *Frozen* teaser trailer have no substantial thematic similarities. The definition of “theme” in art and literature is “a unifying motif” or “recurrent or central idea” that resonates through the development of the characters and plot from beginning to end. A common theme in American dramas is that killing has a ruinous effect on the human psyche, even when it is done with noble intentions (see, for instance, *The Godfather* (1972) and *American Sniper* (2014)). A common theme in American romances is that true love means being selfless enough to sacrifice one's happiness, or even life, for another (see, for instance, *Casablanca* (1942), *A Tale of Two Cities* (1935), *Titanic* (1997) and many others).

The *Frozen* teaser trailer has no themes: no recurrent or central ideas are manifested in the comedic action in the *Frozen* teaser trailer, primarily because it is just an action sequence and not a fully fleshed-out story with character and plot development. The only “unifying motif” is an aesthetic one: the zany, Looney Tunes-like style, tone, and pace of the comedic action and characters' reactions.

*The Snowman*, on the other hand, has three central themes: (1) if you want something bad enough, you have overcome your fears and fight for it; (2) saving a life may be worth sacrificing a part of oneself; and (3) there are more important things in life than winning/getting the prize.

#### *Plaintiff's Claims*

The Plaintiff states that both works “exhibit the same themes of competition, sacrifice, friendship and gratitude.” Complaint ¶ 35(c).

Competition, sacrifice, friendship and gratitude are generic terms that describe types of action (competition and sacrifice) or states of being or feeling (friendship and gratitude). Themes may be related to, or categorized by, generic concepts like these. For example, *Chariots of Fire* (1981) shares a theme with *The Snowman* that falls into the general category of “competition”: that “sometimes, there are more important things in life than winning the prize.” However, one would not say that the theme of *Chariots of Fire* is “competition” in and of itself; the competition in the story is just the backdrop or stage on which the drama and theme play out. Likewise, *Casablanca* has the theme that “it is better to have loved and lost than never loved at all.” But one would not say that the generic term “love” is the theme of *Casablanca*, because elements such as “competition” and “love” aren’t “themes” in and of themselves.

In the *Frozen* teaser, the generic concepts of competition, friendship, and gratitude appear as story elements but have no substantive thematic resonance. Olaf and Sven’s competition is just a zany race to get to the carrot nose; the brief expressions of gratitude and friendship at the end are simply Olaf happily petting Sven and smiling Sven bouncing up and down, ready to play. And there is no indication, or even implication, of sacrifice in the action of Sven putting Olaf’s nose back on, because it’s clear that Sven never wanted to eat the carrot in the first place.

In *The Snowman*, by contrast, the generic concepts of competition, sacrifice, and gratitude *do* have substantive thematic resonance. By competing with the rabbits, the Snowman learns he has the wherewithal to stand up and fight for what is his. Then, after triumphantly retrieving his nose, he realizes that saving a life is worth the potential sacrifice of his nose. Finally, the saved rabbit returns the carrot out of gratitude when he realizes that his own life is more valuable than the carrot nose. (As the rabbits then leave, the concept of “friendship” does not appear to have much thematic resonance. Complaint ¶ 35(c).)

#### **4. Setting**

Both *The Snowman* and the *Frozen* teaser trailer have a winter setting with a slippery frozen pond, a snow-covered hill, and a forest. These are classic examples of scenes-a-faire that appear by necessity in any story set in the woods in winter. By definition, winter scenes have snow, ice, hills and trees. Numerous stories and films dealing with snowmen have these same generic winter settings (see *The Snowman in July* (1944), *Spunky the Snowman* (1958), and *The Adventures of Snowden the Snowman* (1997)).

#### *Plaintiff's Claims*

The Plaintiff claims that both works share “the exact same setting, color palette, and scene selection.” Complaint ¶ 35(e)(i).

These claims lack comparative and analytic detail. The fact that both works are about a snowman makes it logical that each work would have a winter setting and color palette. Moreover, it is not even true that the settings are “exactly” the same. The expression of the landscapes is different in important respects. For instance, the teaser trailer has a flower, perhaps suggesting that spring is coming. The pond in *The Snowman* is next to a large hill that plays an important role in the plot—the carrot lands on the ice because it falls down the hill, and the Snowman is able to get to the carrot because he skis down the hill. The teaser trailer’s landscape is flat.

## 5. Mood

*The Snowman* and the *Frozen* teaser trailer have no substantial similarities in mood because the former is a drama and the latter a comedy. *The Snowman* story begins with a sad tone and mood with the introduction of the raggedy and somewhat pathetic Snowman. The drama heightens through the threat of rabbits and the mechanically determined nature of the rabbits building their walkway to the suspenseful climactic action of the Snowman rescuing the rabbit and the rabbit deciding to return the carrot nose. The somber mood is lifted only when both characters are finally safe and decide to part ways.

The *Frozen* teaser action sequence is a zany comedy with a classic Looney Tunes tone and mood from start to finish.

### *Plaintiff’s Claims*

The Plaintiff states that both works “depict a snowman competing with animals in a way that is endearing, appealing, and heart-warming.” Complaint ¶ 35(e)(ii).

The Plaintiff inaccurately describes her own work. As noted above, *The Snowman* has a sad tone and mood in the beginning and develops a dramatic, suspenseful, and serious tone as the mechanically determined rabbits build their way to the carrot and then one of them nearly drowns. There is nothing “endearing” or “heart-warming” about the way the Snowman and the rabbits compete. The frightened Snowman’s actions to potentially sacrifice his nose to save the drowning rabbit are “appealing” in the sense that they are heroic and inspiring, but again, the story is neither endearing nor heart-warming. The ending action of the rabbit returning the nose and then leaving with the other rabbits has a guarded dramatic mood, which undercuts whatever endearing or heart-warming quality the scene has.

Where *The Snowman* story is a drama with a dark, suspenseful tone and nature, the *Frozen* teaser trailer action sequence is a zany comedy with a classic Looney Tunes tone and nature from start to finish. Endearing, appealing, and heart-warming are not adjectives that accurately apply to either work.

## 6. Pace

*The Snowman* and the *Frozen* teaser trailer are not similarly paced. *The Snowman* has a stop-and-start pace, with rapid action sequences punctuated by slow moments. It starts slowly, with the Snowman struggling to reach his fallen nose, then builds momentum as the rabbits give

chase. It then slows down again as the rabbits make their plan, and builds momentum again through the execution of their plan up to the climactic moment when the Snowman retrieves his nose. At that point, everything stops for a moment before starting again and building through the action of the rabbit falling through the ice and the Snowman rescuing him. The pace stops again when the rabbit finds he has the carrot nose, then inches along as the rabbit decides to give the nose back and leave with the other rabbits.

The pace of the *Frozen* teaser trailer action goes from 0 to 60 in the opening moments, when Olaf's nose lands on the frozen pond, and maintains that pace until the moment after the carrot nose is flipped off the pond, when there is a brief pause to show Olaf lamenting his loss. The pace picks back up when Sven returns to the frame and pops Olaf's nose back on his face.

### *Plaintiff's Claims*

The Plaintiff states, without elaboration, that both works "progress at the same pace." Complaint ¶ 35(e)(iii). I do not think this accurately describes the works. *The Snowman* stops and starts, switching between fast action and slow deliberation, while the teaser trailer is a fast action set piece from start to finish.

## **7. Dialogue**

*The Snowman* has no dialogue. Olaf says one word in the *Frozen* teaser trailer, which indicates he can talk. This is a substantial difference between the characters. Also, Olaf and Sven make several non-verbal utterances, which is notably different from the Snowman and rabbits, who do not make any sound at all.

A lack of dialogue is a relatively generic and recurring idea, especially in cartoons with animals.

## **8. Sequence of Events**

There are substantial differences in how the sequences of events proceed in the two works. The sequence of events in both works is similar on an abstract level, because both employ and are logically constrained by the basic plot structure and framework formula of an *inciting incident* setting up a *conflict*, which is then *complicated* as it builds to a *climax* and *resolution*.

The more abstractly the works are described, the more similar they appear. On a macro level, both works have a snowman losing his nose, competing with another animal to retrieve the nose from the middle of a frozen pond, and losing the nose to his competitor, who gives it back in the end. These aspects of the sequence of events are generic and must be filtered out, however, because story logic so severely constrains the choices in the sequence of events. A snowman losing his nose is clearly an idea that cannot itself be copyrighted. But once an artist commits to that premise, the sequence of events is largely fixed by plot logic. If the snowman loses his nose, he either wants it back or doesn't—and if he doesn't, there is no story. Assuming he does, there has to be an obstacle or conflict to overcome to move the plot action forward. Competing to get to a prize first is a formulaic conflict in storytelling (see *It's a Mad, Mad, Mad*,

*Mad World* (1963) and *Raiders of the Lost Ark* (1981) among many other films). The competition ends (climax) when one of the rivals gets the prize, which leaves only two options for the ending—the winner keeps the prize or gives it away.

Once this generic sequence of events—the snowman losing his nose, prompting a race to retrieve it and the victor ultimately faced with the decision whether to return it—is filtered out, what remains of the sequence of events in both works is substantially different.

#### *Sequence of Events Stage 1: From Inciting Incident to Complication*

The generic idea is the snowman losing his nose, and the generic obstacle setting up the conflict is the frozen pond. What remains when these are filtered out? In *The Snowman*, three events have to happen to get from the Snowman's nose being knocked off to it sliding out onto the frozen pond:

- The Snowman fails to reach his nose because his arms are too short.
- The rabbits pop up and chase the Snowman down the hill.
- The Snowman trips over a boulder and knocks his nose onto the pond.

In the *Frozen* teaser trailer, only one event happens to get Olaf's nose onto the pond: Olaf sneezes and his nose flies off, landing directly in the middle of the pond.

Similarly, in *The Snowman* four events happen before the Snowman joins in the competition to retrieve his nose:

- The rabbits fail to grab the nose as they slide across the pond.
- On the far edge of the pond, the rabbits size up the situation and make a plan.
- The rabbits execute their plan by going into the forest, cutting down a tree, and then starting to build a log walkway onto the ice.
- Only after these three events does the Snowman look for and find the sticks he uses as skis to ski down the hill onto the ice.

In the *Frozen* teaser trailer, the competition starts immediately when Olaf sees Sven run onto the ice and follows suit. It's one event.

#### *Sequence of Events Stage 2: From Complication to Climax*

In both films the climax involves the antagonist taking possession of the nose. The expression of that climactic idea is different in both works. In *The Snowman*, four events happen before the nose ends up in the rabbit's possession, sparking the climax:

- The Snowman gets to and retrieves his nose before the rabbit can get it.
- The ice under the rabbit cracks and he falls into the hole that opens up.
- The Snowman fails to reach the rabbit with his short arms then deliberates as to what to do.
- The Snowman uses his carrot nose to reach the rabbit and then loses his grip on it as he pulls the rabbit out of the water.

In the *Frozen* teaser trailer, only one event happens before the nose ends up in Sven's possession, sparking the climax: Olaf's head and arm reach and grab hold of the carrot nose at the same time Sven grabs it with his mouth, and, as Olaf yanks it away from Sven, it flips out of his hand into the snow, whereupon he grabs Sven's tail and collects his body parts as Sven races off the pond to retrieve the nose.

#### *Sequence of Events Stage 3: From Climax to Resolution*

Both works resolve with the snowman getting his nose back, which is one of only two possible resolutions for the stories. Once that generic idea is filtered out, it is clear that the two endings are expressed very differently. *The Snowman* ends with two events:

- The rabbit deliberates about what to do with the nose (keep it or give it back), then gives it back.
- The rabbit then joins the other rabbits and hops off into the forest, leaving the Snowman alone on the ice.

The *Frozen* teaser trailer ends with three quite different events:

- Olaf drops off Sven's tail on the edge of the pond and sadly puts his body back together.
- Sven pops the nose back in Olaf's head.
- Olaf pets Sven then sneezes his head off.

#### *Plaintiff's Claims*

The Plaintiff states that the sequence of events "is exactly the same in both *The Snowman* and the *FROZEN* teaser trailer. Both are presented in a straight, linear trajectory with the events happening in the same sequence in both *The Snowman* and the *FROZEN* teaser trailer." Complaint ¶ 35(e)(g). In light of the foregoing, I think that the Plaintiff's assertion is wrong. The actual sequence of events in the two works is substantially different.

#### *Court's Ruling*

I also have reviewed the Court's July 30, 2014 ruling, and in particular the Court's conclusion that there was some similarity of expression in the organization of eight different events that the Court said were depicted in both works. Specifically, the Court pointed to the following events:

"(i) a snowman loses his carrot nose; (ii) the nose slides out to the middle of a frozen pond; (iii) the snowman is on one side of the pond and an animal who covets the nose is on the other; (iv) the characters engage in a contest to get to the nose first; (v) the screen pans back and forth from the snowman to the animal, set to music, as they endeavor to get to the nose; (vi) the contest continues when the snowman and the animal arrive at the nose at the same time; (vii) the animal ends up with the nose, leaving the snowman (and the viewer) to wonder if the snowman's nose will become food for the animal; and (viii) in the end, the animal returns the nose to the snowman."



In my opinion, a number of these elements either should be filtered out or are not components of the sequence of events. Event (i) is the basic premise of the two works. Events (iii) and (iv) are dictated by the story logic—somebody who covets the nose must appear, and a contest must ensue, for stories built on the premise of a lost nose to function effectively. Event (v) is not an aspect of the sequence of events, but rather a description of how the events are visually portrayed. Event (vi) is dictated by the need to have a final confrontation between the characters. Event (vii) actually involves multiple events, and thus shows another difference between the works. In *The Snowman*, the snowman actually ends up getting the nose first. The animal (the rabbit) only gets the nose later, as a result of the snowman electing to use the nose to save the rabbit's life. In the *Frozen* teaser trailer, the animal (Sven) indisputably reaches the carrot first, and faces no quandary about whether to return it. Event (viii) is just the resolution, for which, as discussed above, there are only two choices: either the snowman gets the carrot nose back or he doesn't.

As described in detail above, the "sequence" of events in both works is constrained by the story logic as plot action builds from the beginning (inciting incident) to the middle (conflict/complication) to the end (climax/resolution). Each event builds to the next. As set forth, numerous aspects of the sequence of events are scenes-a-faire dictated by story logic. As my above analysis demonstrates, the *expression* of the aspects of the sequence of events, which is not filtered out, is very different in both works. Each step in the sequence involves events that do not match up between the works.

### Conclusion

Based on my knowledge and experience with respect to the creation and development of stories into motion pictures, and the foregoing filtration analysis, I conclude that there is no substantial similarity of protectable expression between the Plaintiff's *The Snowman* and the Defendants' *Frozen* teaser trailer. The similarities that do exist between the two works exist at such a high level of abstraction as to constitute similarities between abstract ideas rather than similarities of actual, concrete expression.

Respectfully submitted,

Dated February 9, 2015

  
James McDonald

# Exhibit A



## **JAMES McDONALD**

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## **CAREER HISTORY**

### **1990 to Present**

#### **PRODUCER**

##### Feature/TV Films

- Development deals with Walt Disney Pictures, Polygram Entertainment, Propaganda Films, and Image Organization.
- Partnerships with The Avnet/Kerner Co., Allagash Films, and Partisan U.S.A.

##### Music

- Managing Partner of the My Songs Company and the Carousel Classics Company.

#### **STORY CONSULTANT, EXPERT WITNESS and ANALYST**

##### Walt Disney Corporation

- Animation Business Affairs Dept.: Forensic analyst for writer credit determinations.
- Feature Film Dept.: Development consultant and Story Analyst.
- Litigation Dept.: Story consultant/expert witness on several plagiarism cases.

##### Paul, Hastings, Jovanovich Law Firm

- Litigation Dept.: Story consultant/expert witness on two cases.

##### Butzel Long Law Firm

- Litigation Dept.: Story consultant/expert witness on one case.

##### Akin Gump Law Firm

- Litigation Dept.: Story consultant/expert witness on one case.

##### Warner Bros., 20<sup>th</sup> Century Fox, Miramax, Pixar, Lionsgate and Walden Media Inc.

- Story consultant and/or analyst-arbiter for writer credit determinations & issues.

### **1977 to 1990**

#### **DEVELOPMENT EXECUTIVE**

Freddie Fields Productions – V.P., Production. Handled development of the movie GLORY.

20<sup>th</sup> Century Fox – Director of Acquisitions & Story Editor/Analyst for John Davis (studio owner at the time).

#### **STORY ANALYST**

20<sup>th</sup> Century Fox, Paramount, Orion, Lorimar, Columbia, Universal, Disney and MGM.

## **EDUCATION**

U.C.L.A. – M.F.A. in Directing, Film & Television Dept.  
Stanford University – B.A., Communications